

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NAVIGATOR CAPITAL PARTNERS L.P., on behalf :
of itself and all others similarly situated, :
Plaintiff, :
- against - : No. 07 Civ. 07783 (AKH)

BEAR STEARNS ASSET MANAGEMENT INC., :
ET AL., :
Defendants, :
- and- :
BEAR STEARNS HIGH-GRADE STRUCTURED :
CREDIT STRATEGIES, L.P., :
Nominal Defendant.

GEOFFREY VARGA and WILLIAM :
CLEGHORN, ET AL., :
Plaintiffs, :
- against - : No. 08 Civ. 03397 (AKH)

BEAR STEARNS ASSET MANAGEMENT INC., :
ET AL., :
Defendants, :
- and- :
THE BEAR STEARNS COMPANIES, INC., ET AL., :
Nominal Defendant.

**DEFENDANTS WALKERS FS, SCOTT LENNON, AND
MICHELLE WILSON-CLARKE'S MOTION TO DISMISS
THE VARGA AND NAVIGATOR AMENDED COMPLAINTS**

Defendants Scott Lennon, Michelle Wilson-Clarke, and Walkers FS (collectively the “Walkers Defendants”) hereby move pursuant to Fed. R. Civ. P. 12(b)(1), 12(b)(2), 12(b)(6), and 9(b) to dismiss all claims against them in the two overlapping above-captioned actions. As explained in the accompanying memorandum of law, the Walkers Defendants respectfully submit that dismissal of all claims against them in the two Amended Complaints (respectively, “Navigator Amended Complaint” and “Varga Amended Complaint”) is required on the following grounds:

First, this Court lacks personal jurisdiction over the Walkers Defendants, all located in the Cayman Islands, because they do not have sufficient contacts with New York to sustain either general or specific jurisdiction;

Second, the failure of shareholder Plaintiffs Navigator, Essex, and Stillwater to make demand on the relevant fund liquidators as required by Fed. R. Civ. P. 23.1 and applicable Delaware law defeats each derivative claim in the Amended Complaints;

Third, Plaintiffs’ breach of fiduciary duty claims against the Walkers Defendants are precluded by exculpation clauses in governing fund documents and are preempted under New York law by the Martin Act;

Fourth, Plaintiffs’ aiding and abetting fraud and aiding and abetting breach of fiduciary duty claims entirely lack specific, necessary allegations (1) that the Walkers Defendants had “actual knowledge” of the wrongful conduct that they allegedly aided and abetted, (2) that identify the specific transactions that underlie each aiding and abetting claim, and (3) that the Walkers Defendants’ aiding and abetting proximately caused harm to Plaintiffs;

Fifth, the Varga Amended Complaint fails to state any allegations that support the necessary elements of its claim for unjust enrichment that the Walkers Defendants were enriched and were enriched at Plaintiffs' expense; and

Sixth, neither Amended Complaint states valid claims against Walkers FS because Plaintiffs' claims are based only on the vicarious liability of Walkers FS for the alleged conduct of Lennon and Wilson-Clarke, both Lennon and Wilson-Clarke acted in their capacity as independent fund directors during the relevant periods outlined in the Amended Complaints, and the Amended Complaints accordingly establish no basis for the liability of Walkers FS under governing Cayman Islands law.

Therefore, the Walkers Defendants respectfully request that the Court grant this Motion to Dismiss the Varga Amended Complaint and Navigator Amended Complaint as to them.

Dated: October 30, 2008

Respectfully submitted,

WALKERS FS, SCOTT LENNON, and
MICHELLE WILSON-CLARKE

By their attorneys,

/s/ Michael A. Collora

Michael A. Collora (*pro hac vice*)
Michael B. Galvin (*pro hac vice*)
Amy B. Auth (*pro hac vice*)
Justin P. O'Brien (*pro hac vice*)
Dwyer & Collora LLP
600 Atlantic Avenue, 12th Floor
Boston, MA 02210
Tel: (617) 371-1000
Fax: (617) 371-1037
mcollora@dwyercollora.com
mgalvin@dwyercollora.com
aauth@dwyercollor.com
jobrien@dwyercollora.com

CERTIFICATE OF SERVICE

I hereby certify that this document has been filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ Michael A. Collora

Michael A. Collora (*pro hac vice*)